supra, also held that the securing, on the same day, of six cotton compresses located in different parts of the state does not show that the object was restriction of trade; nor do such acts show restraint of aids to commerce where the price for compressing cotton is, in effect, regulated by the railroad commission, and cotton required to be compressed at the nearest press. *(Cf. Diamond Match Co. v. Roeber,* 106 N. Y. 473; *Dueber Watch-Case Mfg. Co. v. Howard Watch & Clock Co. et al,* 66 Fed. 637; *U. S. v. Nelson,* 52 Fed. 646.)

In this connection it is instructive to compare the attitude of the United States Supreme Court in the railroad freight pooling case *(U. S. v. Trans-Missouri Freight Ass'n,* 166 U. S. 290) with the reasoning in the decision on the sugar refineries case *(U. S. v. Knight Co.,* 156 U. S. 1). In the former the Court declared that the Federal Anti-Trust act was not limited to "unreasonable" restraints of trade, but that it includes as well reasonable interstate contracts of such restraint which might have been valid at common law. (But see *Eddy on Combinations,* sec. 800 and exceptions cited.) In the refineries case it was held that it is not contrary to the provisions of the Federal Act for a corporation engaged in the manufacture and sale of a staple article to purchase the plants of competitors, situated and doing business in different states, with the admitted object of controlling the manufacture and sale of the particular commodity.

BENEFICIARY'S INTEREST IN A LIFE INSURANCE POLICY.

During the last year the highest court in two states has considered the nature of the beneficiary's interest in a life insurance policy payable to him "if surviving" the insured. Each case was complicated by the fact that the insured and the beneficiary perished in a common disaster.

In the first case, *Hildebrant v. Ames* (Tex. Civ. App. 1902), 66 S. W. 128, the court held that the interest of the beneficiary, under such a policy, was in the nature of an express trust; that the beneficiary could not call upon the trustee to execute the trust until the contingency of the beneficiary surviving the insured had happened; that since there was no evidence or presumption as to survivorship it was impossible to prove the happening of the contingency and therefore the trust failed and the money due under the policy went to the personal representatives of the insured. In the later case of *U. S. Casualty Co. v. Kacer,* 69 S. W. 372, the Supreme Court of Missouri takes a different view, holding that the interest of the beneficiary is an absolutely vested interest and that the insertion, in the policy, of the words "if surviving" does not change the nature of the interest but merely makes it liable to be devested by the happening of a condition subsequent. After taking this position the court logically draws the conclusion that since there is no proof that the condition subsequent did happen, the vested interest of the

beneficiary cannot be devested and his personal representatives will take to the exclusion of the personal representatives of the insured. In the two earlier cases of *Fuller v. Linzee,* 135 Mass. 468, and *Cowman v. Rogers,* 73 Md. 403, the same complication of facts were present, but as these earlier cases are in the same conflict as exists between the two later cases they furnish little assistance to this discussion.

From this brief citation of the cases involving the question of the beneficiary's interest complicated by the question of survivorship it is evident, that in attempting to select the better rule, three points must be considered: First, the law of survivorship; second, the nature of the interest which the beneficiary takes in the ordinary policy of life insurance, and third, the effect which the insertion in the policy of the words "if surviving" has upon that interest. Where lives are lost in a common disaster, and no evidence is forthcoming to show survivorship almost every state holds to the rule that the law will neither presume the prior decease of one person, nor that they all died simultaneously. The result is that one whose right or interest is contingent upon survivorship, unless he can establish it by actual evidence, must fail. *In re Wilbur,* 51 L. R. A. 863.

As to the second point, the majority of the recent cases follow the rule in *Central Bank v. Hume,* 128 U. S. 195, that the policy, and the money to become due under it, belong, the moment it is issued, to the person named in it as the beneficiary and that there is no power in the person procuring the insurance by any act of his, by deed or by will, to transfer to any other person the interest of the person named. There are cases which hold that the insured, where the beneficiary dies before him, may appoint a new beneficiary, but although these are exceptional cases they cannot be said to favor the trust theory, for many of them hold that if the insured does not, during his lifetime, appoint a new beneficiary then the personal representative of the first beneficiary will take whereas, under the trust theory, at the death of the first beneficiary, during the lifetime of the insured, the policy would revert and could under no circumstances go to the representatives of the first beneficiary. *Gambs v. Insurance Co.,* 50 Mo. 44.

Certain conditions, such as the rights of a creditor who has been made beneficiary, exist to-day which were not present to any considerable extent when some of the early decisions were rendered. If the interest of the beneficiary were not vested the creditor who is made beneficiary would receive security only provided it could be proved that he survived the insured.

It has been argued that the trust theory carries out the intention of the insured, but this is true only in certain cases. If the wife was the beneficiary and died before her husband, the insured, then, under the trust theory, the policy would revert to the husband and be liable for his debts, whereas, if the wife's interest is vested, upon her death before that of the insured, it would go to her children rather than to the creditors of the husband.

If then the interest of the beneficiary is a vested interest what effect has the insertion, in the policy, of the words "if surviving?" Under the trust theory these words would have no effect for immediately upon the death of the beneficiary, before the insured, the policy without the words "if surviving" would revest in the insured. But if the interest of the beneficiary is vested, the insertion of these words makes the vested estate liable to be devested by the happening of the condition subsequent. Where the insured and beneficiary perish in a common disaster and no evidence can be produced to show survivorship then since the personal representatives of the insured cannot prove that the condition has happened the interest of the beneficiary cannot be devested.

Because the operation of this rule, affirmed in *U. S. Casualty Co. v. Kacer, supra,* does not in every case carry out the intentions of the insured is not a sufficient reason for adopting the trust view of the beneficiary's interest.

READING THE BIBLE IN COMMON SCHOOLS.

Is reading the Bible in a public school a violation of the provision usually found in the State constitutions declaring that every one has the right to worship God according to the dictates of his own conscience? Does reading the Bible in a public school make the school a "place of worship" which no one may be compelled to support? Is the Bible sectarian? All of these three very interesting questions were recently decided in the affirmative in the case of *State v. Scheve,* 91 N. W. 846. The authorities have decided both ways upon each of these points. And even in this case, while all were agreed that the reading of the Bible, accompanied by singing and praying, according to the usages of the so-called "Orthodox Evangelical Churches," was contrary to a constitutional provision against the giving of sectarian instruction in public schools (which can not be denied), the court divided on these three questions stated.

The majority of the court in this case rely mainly upon *State v. District Board,* 76 Wis. 177, but go a great deal farther. For while the Wisconsin case is authority for the decision that the reading of the Bible in such an instance as this, makes the public school a "place of worship," and that the indiscriminate reading of the Bible violates the constitutional provision in question, it holds that only portions of the Bible are sectarian; that the reading of portions other than these is constitutional; and that a text-book founded upon such other non-sectarian portions, or upon the principles of the Bible as a whole, is a lawful text-book.

The position of the court on the question as to whether the reading of the Bible in a public school makes the school a "place of worship," seems to us to be untenable. To hold with the court in this case and with the Wisconsin case, is placing a strained construction upon the provision in question. The manifest object of the constitutional provisions concerning the maintaining of "places of